

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

MICHAEL JOSEPH KEARNS §
v. § CIVIL ACTION NO. 5:04cv228
FEDERAL BUREAU OF PRISONS §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Michael Kearns, proceeding *pro se*, filed this lawsuit purportedly under the “Privacy Act” complaining that the Defendant was maintaining incorrect records concerning his good time and release date. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On November 15, 2004, the Magistrate Judge determined that Kearns' complaint sounded in habeas corpus and ordered him to refile his petition on a standard Section 2241 habeas petition form. The Magistrate Judge also directed that he submit proof of exhaustion of administrative remedies. Kearns received a copy of the order on November 19, 2004, but did not comply, nor respond in any way.

On May 23, 2005, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice. A copy of this Report was sent to Kearns at his last known address, return receipt requested, but no objections thereto have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and has determined that this Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice. Finally, it is

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

SIGNED this 11th day of July, 2005.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM

UNITED STATES DISTRICT JUDGE